

<p>The Pensions Regulator</p>	<p><b>Compulsory Review FINAL NOTICE under Section 99(4) of the Pensions Act 2004 (“the Act”)</b></p> <p><b>Hollywell Enterprises Pension Scheme  (“the Scheme”)</b></p>	<p>The Pensions Regulator case ref:</p> <p><b>C8407400</b></p>
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1. **TAKE NOTICE** that the Pensions Regulator (“the Regulator”) of Napier House, Trafalgar Place, Brighton BN1 4DW has reviewed the orders made subsequent to a Special Procedure hearing on 17 October 2011.

2. **Determination**

On 5 December 2011 the Determinations Panel (“the Panel”) carried out a Compulsory Review of the determination made by the Panel on 17 October 2011 under the Special Procedure. That determination was to issue orders (“the orders”) in the following terms:

**A. Appointment of independent trustee**

1. Independent Trustee Services Limited of 2 Seething Lane, London EC3N 4AT is hereby appointed as trustee of the Hollywell Enterprises Pension Scheme with effect on and from 17 October 2011.

2. This order is made because the Pensions Regulator is satisfied that it is reasonable to do so, pursuant to the relevant provisions of the Pensions Act 1995 as set out below, in order:

- i. to secure that the trustees as a whole have, or exercise, the necessary knowledge and skill for the proper administration of the Scheme pursuant to Section 7(3)(a);
- ii. to secure the proper use or application of the assets of the Scheme pursuant to Section 7(3)(c);
- iii. otherwise to protect the interests of the generality of the members of the Scheme pursuant to Section 7(3)(d).

3. The powers and duties exercisable by Independent Trustee Services Limited shall be to the exclusion of all other trustees of the Scheme pursuant to Section 8(4)(b) of the Pensions Act 1995.

4. Independent Trustee Services Limited’s fees and expenses shall be paid out of the resources of the Scheme pursuant to Section 8(1)(b) of the Pensions Act 1995 and an amount equal to the amount paid out of

the resources of the Scheme by virtue of Subsection 8(1)(b) is to be treated for all purposes as a debt due from the employer to the trustees of the Scheme pursuant to Section 8(2) of the Pensions Act 1995 as amended by Section 35 of the Pensions Act 2004.

5. This order:

- i. will take immediate effect on the date of this Order;
- ii. may be terminated, or the appointed trustee replaced, at the expiration of 28 days notice from the Pensions Regulator to the appointed trustee, pursuant to Section 7(5)(c) of the Pensions Act 1995.

## **B. Vesting Order**

1. The Pensions Regulator hereby orders the vesting in, assignment to and transfer to Independent Trustee Services Limited of 2 Seething Lane, London EC3N 4AT as trustee of the Hollywell Enterprises Pension Scheme, as appointed under Section 7 of The Pensions Act 1995 by The Pensions Regulator, of all property and assets of the above scheme, heritable, moveable, real and personal, of every description and wherever situated.

2. This Order is made by The Pensions Regulator pursuant to Section 9 of The Pensions Act 1995, as amended.

3. This Order will take immediate effect as at the date of this Order.

### **3. Directly affected parties**

The Regulator considers the following parties to be directly affected by this determination:

- i Elizabeth Vago – trustee
- ii Desmond Murray – trustee
- iii Hollywell Enterprises Limited
- iv Independent Trustee Services Limited (“ITS”)

### **4. Decision on Compulsory Review**

Having re-considered the facts, concerns and submissions of the Regulator set out in the Request to exercise a Regulatory Function and having considered the documents listed below, the Panel confirmed the order made on 17 October 2011. The documents submitted were:

- i. Letter from ITS dated 10 November 2011 containing representations.
- ii. Further documents from the Regulator in response to Panel Support’s letter of 14 November 2011.

iii. Email chain between Mr Murray and the Regulator dated 15 November 2011 and 28 November 2011.

## **5. Reasons for Decision**

The Panel's reasons for confirming the order were principally the same as those given in the Determination Notice dated 17 Oct 2011. Nothing in the responses received had challenged the conclusions of the Panel or the evidence upon which those conclusions were based.

However they gave careful consideration to the letter of 10 November 2011 a copy of which had been sent to the original trustees. They noted that the original trustees had failed to produce evidence of the investment advice they had taken concerning Chesterton Investments Ltd in particular, nor any evidence of the remit of that company. Evidence of the contracts signed by members had not been produced, nor evidence of the details of information for members about the Scheme or communication between the trustees and members about it. This supported the Panel's view that Scheme assets had been significantly at risk before the appointment of ITS and that the original trustees lacked the necessary skill and knowledge either to understand or to carry out their duties as trustees.

The Panel further noted that discussions between the independent trustee and members had shown that some had joined the Scheme in response to the possibility that loans would be made against pension assets where members were under the age of 55 without being made aware of the inherent risks of such investments by way of loan and of the likely consequences, in particular in regard to tax liability. The Panel concluded from the references in the letter of 10 November to the emails sent by XXXXXXXXXXXX – a colleague of the original trustees – that only after the appointment of ITS had any reference been made to the attention of the Regulator to these loans and to their tax consequences. The effect of the emails of XXXXXXXXXXXX seemed to be now to distance the trustees from making these loans.

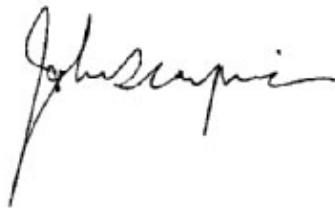
The Panel were therefore satisfied that the order should be confirmed.

## **6. Referral to the Tax and Chancery Chamber of the Upper Tribunal**

You have the right to refer the matter to which this Final Notice relates to the Tax and Chancery Chamber of the Upper Tribunal ("the Tribunal"). Under Section 103 of the Act you have 28 days from the date this Final Notice is sent to you to refer the matter to the Tribunal or such other period as specified in the Tribunal rules or as the Tribunal may allow. A reference to the Tribunal is made by way of a written notice signed by you and filed with a copy of this Final Notice. The Tribunal's address is: 45 Bedford Square, London WC1B 3DN (tel 020 7612 9700). The detailed

procedures for making a reference to the Tribunal are contained in Section 103 of the Act and the Tribunal Rules.

You should note that the Tribunal rules provide that at the same time as filing a reference notice with the Tribunal, you must send a copy of the reference notice to the Pensions Regulator. Any copy reference notice should be sent to Determinations Panel Support at The Pensions Regulator, Napier House, Trafalgar Place, Brighton BN1 4DW.



**Signed:**

**Chairman: John Scampion.....**

**Dated: 7 December 2011.....**